

(1988) 07 BOM CK 0037

In the Bombay High Court

Case No : Criminal Writ Petition No. 765 of 1986

M/s Sanghi Motors (Bombay) Ltd. and another

APPELLANT

Vs

M.T. Shinde and another

RESPONDENT

Date of Decision : 08-07-1988

Acts Referred:

Penal Code, 1860 (IPC) — Section 341, 441, 447

Citation : (1988) 3 BomCR 358

Hon'ble Judges : S.M. Daud, J

Bench : Single Bench

Judgement

1. This petition is by a Private Limited Company and a division thereof taking exception to the cognizance taken against them by a Magistrate upon a complaint of Respondent 1 that they have committed offences punishable under Sections 341 and 447 r/w. 34 of the I.P.C.

2. Respondent No. 1 claiming to be the Manager of a premises Co-operative Society purports to act under a resolution passed by the Managing Committee of the said Society on 25 February 1985. It is claimed that the Society owns property known as Mani Mahal situate at 11/21, Mathew Road, Bombay-4. The society has 16 members/occupants. Petitioners are occupants of the ground floor of the building being tenants of a member Mrs. Ben D. Patel. They have raised a garden in the open space and have put up a cordon beyond the said garden. This constitutes criminal trespass as it has been done with an intent to annoy the members and tenants of the Society in possession of the property. Next, as a result of the acts of the Petitioners, the members and occupants who have a right to the unrestricted use of the usurped area, have been wrongfully restrained from using the same. Petitioners have thereby committed offences punishable under Sections 447, 341 r/w. 34 I.P.C. On receipt of the complaint, a preliminary statement of the complainant was recorded and thereafter the Magistrate directed the issue of process against Petitioner.

3. Petitioners contend that the recitals in the complaint and the preliminary

statement do not make out any offence. They are Companies and it is unthinkable that they would have the requisite mens rea which is an essential ingredient of the offence of criminal trespass and wrongful restraint punishable under Sections 447 and 341 of the I.P.C. Both the offences are punishable with imprisonment or fine and the companies which have a mere juristic existence cannot be imprisoned. The Magistrate has not applied his mind to this aspect of the case and therefore the order taking cognizance had to be quashed. In reply, it is contended that the recitals appearing in the complaint make out a prima facie case that the Petitioners have committed the offence ascribed to them. Being Companies does not exonerate them from the punishment prescribed for the offences punishable u/s s 447 and 341 I.P.C.

4. Two questions that arise are -

(i) whether a cognizable offence is disclosed against the Petitioners ?

(ii) whether the Petitioners being Companies could not have been proceeded against under Sections 447 and 341 I.P.C. ?

The submission that the complaint does not disclose an offence cannot be said to be borne out. At this stage we were restricted to the recitals appearing in the complaint and the preliminary statement of the complainant. In para 10 of the complaint, it is alleged that a garden has been put up and cordoned - so effected with intent to annoy the members and tenants of the Society in possession of Mani Mahal. Prima facie, this would attract the definition of criminal trespass as has been given in S. 441 of the Penal Code. Mr. Kotwal refers to the preliminary statement of the Complainant where it has been said that the Petitioners had encroached upon the land of the Society. According to the learned Counsel this indicates that the real grievance of the Complainant is of encroachment, something which can be remedied civilly. I cannot agree. The assertion that the Petitioners have encroached upon the land of the Society is followed by the words "and committed an offence". This would mean that the maker of the preliminary statement was aware of the requirement of S. 441 of the Penal Code. The recitals in the complaint and the preliminary statement also show that as a result of the putting up of the garden and the erection of a cordon line, the space meant for the common use of the occupants and members of Mani Mahal has been appropriated to the exclusive use by the Petitioners. This prima facie would constitute a restraint upon the unrestricted right of passage which the members and occupants of Mani Mahal have. Therefore, it cannot be said that the complaint does not make out any case against the Petitioners.

5. The other submission that the Petitioners being Companies could not be prosecuted for offences where the essential ingredient was mens rea, now arises for consideration. Counsel for Respondent 1 relies upon a judgment of Paranjpe, J. in State of Maharashtra Vs. Syndicate Transport Co. (P) Ltd. and Others, . That authority bears out what she has to say on the subject. Her submission briefly stated is that the offences of criminal trespass and wrongful restraint are not

compulsorily punishable with imprisonment only. The punishment for the two offences can be imprisonment or as also fine. In such a case, if the offender is a company cognizance can be taken and punishment meted out in the form of sentences for fine and not imprisonment. To quote from the judgment of Paranjpe, J. :-

"As adumbrated, a company cannot be indictable for offences like bigamy, perjury, rape etc. which can only be committed by a human individual or for offences punishable with imprisonment or corporal punishment. Barring these exceptions, a corporate body ought to be indictable for criminal acts or omissions for its directors, or authorised agents or servants, whether they involve mens rea or not, provided they have acted or have purported to act under authority of the corporate body or in pursuance of the aims or objects of the corporate body. The question whether a corporate body should or should not be liable for criminal action resulting from the acts of some individual must depend on the nature of the offence disclosed by the allegations in the complaint or in the charge-sheet, the relative position of the officer or agent vis-a-vis the corporate body and the other relevant facts and circumstances which could show that the corporate body, as such, meant or intended to commit that act. Each case will have necessarily to depend on its own facts which will have to be considered by the Magistrate or Judge before deciding whether to proceed against a corporate body or not."

Mr. Kotwal argues that the judgment of Paranjpe, J. has to be read in the background of the Directors being prosecuted along with the Company. I do not agree that this would make any difference to the liability of a company to be prosecuted. The words used by Paranjpe, J. show that a corporate body can be indicted for criminal acts where those purporting to act on its behalf claim the authority of the body to act in the manner they have done. Therefore, it cannot be said that merely because the Petitioners are corporate bodies they cannot be indicted for offence like criminal trespass or wrongful restraint. The result of the foregoing discussion is that the petition fails and the rule is hereby discharged.

6. Petition dismissed.